IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 39883 of 2003(W)

PETITIONERS:

----

1. E.K.MATHEW, 1ST GRADE OVERSEER,
PUBLIC WORKS DEPARTMENT, BUILDINGS SUB DIVISION,
GANDHI NAGAR, KOTTAYAM.

2. SUNNY GEORGE, 1ST GRADE OVERSEER,
PUBLIC WORKS DEPARTMENT, BLOCK DEVELOPMENT
OFFICE, KADUTHURUTHY, KOTTAYAM DISTRICT.

BY ADV. SRI.D.KISHORE

RESPONDENTS:

----

1. KERALA PUBLIC SERVICE COMMISSION,
PATOM, THIRUVANANTHAPURAM, REPRESENTED BY ITS
SECRETARY.

2. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE CHIEF ENGINEER (ADMINISTRATION),
PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC for R1
BY GOVERNMENT PLEADER SMT. T.B. RAMANI for R2 & R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON 14/08/2007 DELIVERED THE FOLLOWING:

WPC.NO.39883/2003 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE NOTIFICATION PUBLISHED IN THE P.S.C.BULLETTIN DTD. 1ST DECEMBER, 2003 FOR RECRUITMENT TO THE POST OF ASST.ENGINEER (CIVIL) IN THE P.W.D.**

EXT.P2: **COPY OF THE INTERIM ORDER DTD. 13/02/2006 IN I.A.1823/06 IN WP(C) 24527/04 OF THIS HON'BLE COURT.**

EXT.P3: **COPY OF THE RANKLIST FOR THE POST OF AE (CIVIL)COME INTO FORCE WITH EFFECT FROM 20/03/2006 PUBLISHED IN KERALA PUBLIC SERVICE COMMISSION.**

EXT.P4: **COPY OF THE G.O.(RT) 244/07/PWD DTD. 19/02/07.**

EXT.P5: **COPY OF THE JUDGMENT DTD. 26/05/2006 IN WP(C) NO.24498/04.**

EXT.P6: **COPY OF THE JUDGMENT DTD. 25/10/2006 IN WP(C) 24527/04.**

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

= =

WP(C).No.39883 OF 2003-W

= =

Dated this the 14th day of August, 2007.

JUDGMENT

Petitioners are aspirants for appointment as Assistant Engineer (Civil) in the 6% quota reserved for in-service candidates under the Special Rules for the Kerala Engineering Service (Civil and General Branch). The controversy was as to whether the petitioners were entitled to aspire for recruitment in that quota without having served in the Public Works Department for a period of two years. They belonged to the Irrigation Department and the substantive grievance of the petitioners was on the basis that the Irrigation Department and Public Works Department cannot be treated as two units for the purpose of the recruitment. They accordingly filed this writ petition challenging the vires of the relevant provisions of the

Special Rules which prescribe the acquisition of two years' experience in the Public Works Department as a condition for consideration for recruitment as against the 6% in-service quota.

2. In so far as their claim to be treated as eligible as against 6% quota reserved for in-service candidates is concerned, they sought interim relief. By order dated 18-8-2004, this Court refused to grant them the interim relief as prayed for. In the meanwhile, the written examination was conducted by the Public Service Commission and they wrote that examination. By interim order dated 17-1-2006, this Court permitted the petitioners to participate in the interview scheduled on 21-1-2006 provisionally and subject to the result of the writ petition.

3. In the meanwhile, the petitioners moved the Government for an order of exemption from acquiring the

qualification. The power to grant such exemption is in terms of Rule 39 of Part II of the Kerala State and Subordinate Services Rules. On being moved for consideration and disposal of that representation, this Court took the view that there cannot be any direction to consider such a request, obviously, because, there was no statutory or public duty in the Government to grant such relaxation. That rule is merely the recognition of the existence of such a power of the Government. It is not open to the courts to compel the exercise of such power. O.P.19145/2006 filed by the petitioners was accordingly dismissed. Thereafter, the Government acted on the representations of the wife of the first petitioner and the wife of the second petitioner and issued Ext.P4 Government Order on 19-2-2007 granting exemption to the petitioners from the condition regarding the minimum period of experience in the Public Works Department.

4. Thus, as of now, all that the petitioners seek for is for a direction to act on the exemption granted to them and treat them as qualified and to take further action on their application for recruitment on that basis.

5. In opposition, it is contended by the learned counsel for the Public Service Commission that the exemption granted at this point of time, though expressly made retrospective (See Ext.P4) with effect from 27-1-2004, it is impermissible and impossible to advise appointment.

6. Similar contention of the Public Service Commission appears to have been rejected by this Court as per Ext.P5 judgment as confirmed by the Division Bench in Ext.P6. The Division Bench, in Ext.P6, noticed the decision of the Apex Court in **Government of A.P. and others v. Sri.D.Janardhana Rao and another** (AIR 1977 SC 451), wherein it was held that “in the

interest of justice and equity, power of relaxation can be exercised even with retrospective effect. In this case, considering Ext.P1 recommendation of the Chief Engineer and considering the qualification and previous experience of the petitioner in PWD and in KSEB and also considering the dearth of departmental candidates for valid and equitable reason the order was passed and nobody has challenged the above order. PSC is also not sitting in appeal over the orders passed by the Government."

7. One of the contentions that was attempted to be canvassed by the PSC is that the examination that the petitioners attended was for recruitment as against the quota other than the 6% in-service quota and therefore, the petitioners are persons, who have not appeared for the examination for the 6% in-service quota. There is no material on record on the basis of which the PSC could canvass that two different tests have been conducted for

the candidates coming from the different units and that a separate test was conducted for the 6% in-service PWD candidates. Unless such an examination is conducted, that too, with clear prior provision in the notification inviting applications, the contention of the PSC in that regard is only to be repelled. I do so.

8. In the result, reliefs (i) and (ii) are not answered and are left upon. Relief (iii) is granted declaring that the petitioners are eligible to be considered for direct recruitment to the post of Assistant Engineer in the 6% quota reserved for departmental candidates in PWD notified under Ext.P1, on the basis of Ext.P4 order of the 2nd respondent. Relief (iv) is refused. Relief (v) is granted partly directing that the names of the petitioners shall be included in the ranked list for the post of Assistant Engineer (Civil) in the departmental quota notified pursuant to Ext.P1, if otherwise eligible and they shall be advised for appointment in terms of the

law.

The writ petition is allowed as above. No costs.

THOTTATHIL B. RADHAKRISHNAN,
Sha/- **JUDGE.**